

Comment on Federal Communications Commission
Long Distance Industry Regulations

Docket Nos. WC 02-112 and CC 00-175

1. These comments are in response to FCC's News Release seeking Comment on the Long Distance Industry Regulations.
2. I am an Assistant Professor at the University of Miami. My research focuses on the intersection of regulation and competition, with a current focus on telecommunications.
3. Wireline telephony remains important. The infrastructure is ubiquitous (~95% of U.S. homes have telephones) and represents an enormous investment unlikely to be abandoned (RBOCs plant in service estimated to be \$300 billion). In the voice arena, wireless lines have made significant inroads, but are unlikely to replace landlines due to the reliability, quality and coverage issues cellular phones continue to face. On the data side, wireless technologies have so far been a disappointment, to the point where there are strong doubts regarding the future rollout of third-generation cellular (3G). Cable does present competition to wireline infrastructure, but primarily in the residential market. Fixed wireless and satellite data technologies remain limited to niche markets.
4. RBOCs still dominate the market for local telephony. Estimates place overall CLEC penetration at approximately 10% of revenues and switched access lines, though this number is closer to 7% if the analysis is confined to residences and small businesses. In addition, there are significant differences among states, with the 25% CLEC penetration in New York being an anomaly. Given this lack of competition, prices for local telephony continue to increase. By contrast, in long distance, where competition is robust, per minute toll charges have decreased dramatically.
5. Entry into long distance presents a number of advantages for RBOCs: the opportunity to bundle products and services (to reduce overhead expenses and customer churn), and the opportunity to enter a new business where infrastructure costs are lower.
6. Under Section 271 of the Telecommunications Act of 1996, RBOCs were offered this "carrot" in exchange for opening up the market for local telephony to competition.¹ During the first five years after the passage of the Act, only five RBOC applications were approved. However, since April 2001, there have been thirty-seven approvals.
7. This rapid pace of approvals, however, seems to have little correlation to increased competition in local telephony, with nationwide CLEC share of end-user lines

¹ The actual statutory framework is more complex, and includes, among other provisions, a fourteen-point checklist. See 47 U.S.C. §271.

increasing by less than 5%, remaining well below 15%. In addition, RBOCs are now allowed to provide long distance in states where CLECs' market share is well below 5%.

8. RBOCs are thus allowed to provide long distance services in over forty states where in many cases the actual level of local competition is very low, and likely to be even lower if the analysis is confined to residential customers (since CLECs compete predominantly for business customers). (While section 271 does not explicitly require actual local competition, the FCC could have denied applications under its "public interest" authority.²)
9. As some commentators have begun to note, the ironic upshot is that these long distance approvals—combined with the mergers and consolidation of RBOCs—means that the telephone market could evolve to a situation similar to that with AT&T pre-divestiture. In other words, there is a risk that four "baby" AT&T's, which still dominate local telephony, could also emerge as the leading player in long distance given the structural advantages outlined in ¶ 5 above.
10. Given that RBOC approval to provide long distance is irreversible (unless Congress decides to modify the statutory framework), the separate affiliate requirements of Section 272 can at least provide some accounting transparency that will help the FCC and state PUCs, as well as federal antitrust authorities, to detect anticompetitive behavior. The FCC should err on the side of more, not less, disclosure. The ability for regulators to monitor behavior outweighs the additional administrative burdens placed on the RBOCs.
11. More broadly, rather than return to old-style "dominant carrier" rate regulation, the FCC should consider careful regulation of "bottleneck" inputs, and allow competition to flourish elsewhere in the network. For example, in the case of RBOCs, the challenge is to provide access to the appropriate network elements at a price that encourages the RBOC to invest while at the same time affording new entrants the opportunity to enter. This approach could avoid the current situation where RBOCs are repeatedly paying fines for violations stemming from their desire to protect their local markets from competitors. I attempt to propose such a regulatory framework in an article entitled "Lack of Competition in Local Telephony: Is the 1996 Telecommunications Act to Blame?" which appears in the *Washington University Law Quarterly*.
12. The article mentioned in ¶ 11 also attempts a more detailed examination of many of the issues raised in ¶¶ 1-10 above within the broader context of telecommunications regulation. In addition, I would be pleased to provide further information to the extent it might be helpful to the FCC.

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² See 47 U.S.C. §271(d).

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